



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Water Resources Education

File: B-224684

Date: January 7, 1987

DIGEST

1. Where solicitation for a course of instruction requires offerors to disclose the success rate of former students in passing state examination, but does not require any certification or verification of this information, it is not unreasonable for evaluators to evaluate offers on the basis of the rates stated in proposals.
2. Protest that the price of texts to be used by each offeror in solicitation for a course of instruction should have been included in the evaluation of the offeror's cost is untimely when raised after the closing date for receipt of proposals.
3. Protester has not shown that evaluation was improper by alleging that protester's instructors are superior to awardee's instructors where protester's proposal received higher score for the "qualifications of instructors" criterion, but this criterion accounted for only 20 percent of the total score for technical proposals.

DECISION

Water Resources Education (Water Ed) protests the award of a subcontract to Aiken Technical College (Aiken) by E.I. Du Pont De Nemours & Co. (Du Pont) under request for proposals No. 86-85 for a course of instruction in wastewater treatment for Du Pont employees. Du Pont is the prime contractor under Department of Energy (DOE) contract No. DE-AC09-76-SR0001 for the operation of the Savannah River Plant for the production of nuclear materials. Water Ed alleges that Du Pont improperly evaluated proposals and questions the accuracy of Aiken's proposal in its representation of the firm's experience and abilities.

We deny the protest in part and dismiss it in part.

Du Pont initially issued this procurement as request for quotations (RFQ) No. 86-66. Water Ed and Aiken submitted the only quotations in response to the RFQ; of these two, Water Ed's price was lower. Water Ed's quotation was found non-responsive, however, and award was made to Aiken. When Water Ed challenged the propriety of the award decision to DOE, Du Pont decided to cancel the RFQ and resolicit the requirement under request for proposals (RFP) No. 86-85.

The RFP contemplated award of a fixed-price contract to provide a 16-week course of training for wastewater treatment operators, to begin September 8, 1986. The RFP advised offerors to submit separate cost and technical proposals, which would be weighted equally in the overall evaluation. Technical evaluation criteria were listed in descending order of importance as "Company Background and Experience" (defined as the percentage of students that pass the state examination on the first attempt, and experience in education); "Commitment to Accomplish Scope" (defined as the ability to provide backup instructors, and flexibility to adapt to various class schedules); and "Qualifications of Instructors" (defined as knowledge of materials to be taught, knowledge of wastewater treatment, and education background of instructors).

Aiken's technical proposal received a higher score than Water Ed's. In addition, Aiken's price of \$19,673 was lower than Water Ed's \$20,000 price. Du Pont therefore selected Aiken for award.

Water Ed notes that Aiken stated in its proposal that the percentage of its students passing the state examination on the first attempt is 92 percent. The protester questions the validity of this figure, contending (from its own past experience as an instructor for Aiken) that Aiken's instructors generally do not know whether their students are taking either the course or the exam for the first time, nor do they have access to the exam results. Water Ed states that in contrast, its knowledge of its own 90 percent "pass" rate is reliable because it is based on information it received from Du Pont in connection with Du Pont operators Water Ed had instructed in the past.

In response, DOE states that Du Pont's evaluators used the figures submitted by the offerors in their proposals, since there was no basis to question the percentages given. The agency also points out that Water Ed has presented no factual information refuting the pass rate that Aiken submitted.

Generally, our Office does not review subcontract awards by government prime contractors, except where the award of the subcontract is by or for the government. 4 C.F.R. § 21.3(f)(10) (1986). Here, the contractor is managing a government-owned facility and is thus acting "for" the government. See Rosemount, Inc., B-218121, May 16, 1985, 85-1 CPD ¶ 556 at p. 2. We review such subcontract procurements to determine whether awards were consistent with the policy objectives of the federal statutes and regulations. Id. Our review of evaluation of proposals is limited to examining whether the evaluation was fair, reasonable and consistent with the stated evaluation criteria. We will question the prime contractor's determinations concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Computer Sciences Corp., B-210800, Apr. 17, 1984, 84-1 CPD ¶ 422.

We note that Aiken did not simply list a numerical percentage in its proposal for evaluation, but explained, under "Background and Experience," that the South Carolina Water Quality Institute would act as a resource center through Aiken, and that the Institute is the designated State Training Center for water and wastewater operators. The Institute's faculty delivers training throughout South Carolina and maintains a full-time staff that is responsible for delivery and record maintenance concerning the courses of instruction the Institute conducts. The "current passing percentage for first attempt" on the state examination was then represented as 92 percent.

The record also includes comments submitted by Aiken as an interested party to the protest. Aiken asserts that both itself and the Institute maintain records of courses taken by students as well as pass/fail ratios for the courses they conduct, as required by state law. In these circumstances, we cannot say that it was unreasonable for Du Pont to accept the pass-rate percentages for a state-administered examination as they were submitted by a state training center.

Water Ed also alleges that "the fact that [Aiken] submitted a figure that was only two percentage points above the figure submitted by Water Ed indicates that [Aiken] had knowledge of the 90 percent figure that had been previously submitted by Water Ed." However, since Water Ed has not provided any evidence of the actual disclosure of its proposal, this allegation is speculative, and we conclude that the firm has not met its burden of proof with regard to this protest issue. See Domar Industries Co., Inc., B-202735, Sept. 4, 1981, 81-2 CPD ¶ 199.

Water Ed next contends that when prices were compared, "the price of the course should have included the cost of the textbooks used by the two vendors." The protester alleges, in this regard, that the texts Aiken selected cost substantially more than those used by Water Ed and that this should have been taken into account in the evaluation of costs. However, this protest issue concerns a matter that was apparent prior to receipt of initial proposals and therefore had to be raised before the closing date in order to be considered. 4 C.F.R. § 21.2(a)(1). That is, since the RFP listed acceptable texts and permitted the subcontractor to determine which one Du Pont would supply, Water Ed should have known this basis for protest when it first examined the RFP. Accordingly, this portion of the protest is dismissed.

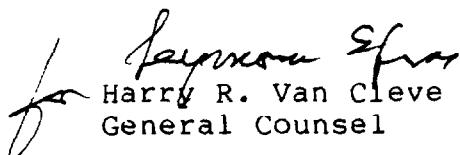
The protester further contends that its own instructors are "superior on all criteria used for the evaluation." In response, the agency points out that Water Ed's proposal received a slightly higher score in the evaluation of the instructors it proposed, but that it was not sufficient to carry the overall evaluation. We note that the weight assigned to the "Qualifications of Instructors" evaluation factor was only 20 percent of the total score for technical proposals. Furthermore, Water Ed's proposal received lower scores than Aiken's proposal for each of the remaining criteria. In these circumstances, the protester has not shown that the proposal evaluation was unreasonable or in violation of procurement statutes or regulations.

Water Ed also notes that the RFP required offers to be priced on a firm fixed-price basis for 40 sessions with optional pricing for additional sessions and protests that Aiken's offer did not include this optional pricing. However, a copy of Aiken's proposal that was provided in the agency's report includes pricing for the optional sessions. Since the record directly contradicts the protester's unsupported allegation in this regard, this protest issue is denied.

Finally, the protester alleges that Du Pont had already ordered the training materials and texts that Aiken proposed to use in performing the contract before Aiken was awarded the contract. Water Ed requests our Office to determine whether this was, in fact, the case. However, we do not conduct investigations in connection with our bid protest function for the purpose of establishing the validity of a

protester's assertions. See William A. Stiles
III--Reconsideration, B-215922.3, Feb. 19, 1985, 85-1 CPD
¶ 208. We therefore will not consider this protest issue
further.

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel